



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 31, 1996

Mr. Randel B. Gibbs  
Law Offices of Earl Luna, P.C.  
4411 Central Building  
4411 North Central Expressway  
Dallas, Texas 75205

OR96-0131

Dear Mr. Gibbs:

You have asked if certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 22822.

The Quinlan Independent School District (the "district") received three separate requests for records concerning named students. One requestor asked for a "written transcript of all statements" made concerning a named student. Another requestor sought "all accusations, references and pro statements" made concerning a particular student, and particularly any statements made during the school board meeting of September 20, 1993. A third requestor sought a transcript of any statements made during that same school board meeting. You assert that the information at issue is confidential pursuant to section 552.101, in conjunction with provisions of chapter 551 of the Government Code.

You submitted to this office as responsive to the requests tape recordings of what you contend was a closed meeting held pursuant to section 551.082 of the Government Code. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 551.146 of the Government Code provides that it is a criminal offense to disclose to a member of the public a tape recording of a closed meeting. A tape recording of a closed meeting is available for public inspection and copying only under a court order. Gov't Code § 551.104; *see also* Open Records Decision Nos. 563 (1990) at 6, 495 (1988) at 4 (tape recordings of closed meetings are confidential unless a court rules

otherwise).<sup>1</sup> We agree that the tape recordings of closed executive meetings are made confidential by law and thus may not be disclosed to the requestor.

Although you submitted no other records to this office for review, it appears that the requestors may be seeking records other than the tapes at issue. Please note that this office recently issued Open Records Decision No. 634 (1995), concerning education records that may be excepted from disclosure under the federal Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g, or section 552.114 of the Government Code. That decision concluded: (1) an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by section 552.101 as "information considered to be confidential by law," without the necessity of requesting an attorney general decision as to that exception, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception.

We note that information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." Open Records Decision Nos. 332 (1982), 206 (1978).<sup>2</sup> If you have questions as to the applicability of FERPA to any information that is the subject of an open records request, you may consult with the United States Department of Education's Family Policy Compliance Office. See Open Records Decision No. 634 (1995) at 4, n.6, 8. We believe that this ruling is dispositive as to any requested records that are subject to FERPA or section 552.114 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous

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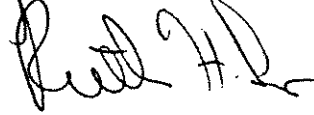
<sup>1</sup>You ask if you are required to create a written transcript from the tapes in order to satisfy the requests. A governmental body is not required to prepare new information in response to a request for information. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W. 2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed).

You also ask whether the requestors have a special right of access under section 552.023 that overrides section 551.104. Section 552.023 of the Government Code provides that a requestor has a right of access to records, beyond that of the general public, when the information "is protected from public disclosure by laws intended to protect that person's privacy interests." However, as the statutory restrictions concerning disclosure of tapes of a closed executive meeting are not laws intended to protect the requestors' privacy interests, section 552.023 is inapplicable in this situation.

<sup>2</sup>But see 20 U.S.C. § 1232g(a)(1)(A), (d) (parent or adult student has affirmative right of access to that student's education records). See also Open Records Decision No. 431 (1985) (Open Records Act's exceptions to required public disclosure do not authorize withholding of "education records" from adult student).

determination under section regarding any other records. If you have questions about this ruling, please contact our office

Yours very truly,

A handwritten signature in black ink, appearing to read 'Ruth H. Soucy', written in a cursive style.

Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/ch

Ref.: ID# 22822, Open Records Decision No. 634 (1995)